In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES EX RELATIONE Charles P. Steinmetz, plaintiff in error,
v.
FREDERICK I. ALLEN, COMMISSIONER of Patents, defendant in error.
} No. 383.

PETITION FOR CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE COMMISSIONER OF PATENTS IN OPPOSITION.

This cause was brought here by writ of error to the court of appeals of the District of Columbia. The record was filed July 29, 1903. Upon motion of the defendant in error it was advanced and set for hearing directly after No. 13, Original, Ex parte Frasch. On Monday, December 14, a motion was made for final hearing of *Ex parte Frasch* and a day fixed therefor later in that week. It was taken up Friday, December 18. For want

of time to hear it before the recess this cause was postponed until January. Briefs were prepared and filed by all parties in interest in both cases prior to December 16. In the brief for defendant in error it was insisted that the court had no jurisdiction, as there was not "drawn in question the validity of * * * an authority exercised under the United States."

On December 16 notice was served herein that on Monday, December 21, plaintiff in error would apply for a writ of certiorari.

Respondent respectfully insists that it is now too late for such an application; that it would be contrary to the orderly administration of the court's business and contrary to its policy to grant the same.

Reference is made in the brief filed in support of the motion to a petition filed by the Government and granted under similar circumstances in *Henry C. Payne, Postmaster-General, plaintiff in error*, v. *The United States, etc.*, No. 628, October term, 1902 (189 U. S., 512). In that case the record and writ of error were filed here March 7, 1903, and *on the same day* the papers and petition for certiorari were likewise filed. On March 9 petition was submitted to the court, and March 16 it was granted. The Government acted with promptness and did not wait until the cause was ready and about to be heard before making application for the writ.

The merits of the present controversy have been discussed at length in the brief already filed for defendant in error, and to it reference is made.

HENRY M. HOYT,
Solicitor-General.

DECEMBER 21, 1903.

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